

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION**

**CURTIS C. MCCONIHAY**

**Plaintiff,**

**vs.**

**Civil Action No. 3:09-0315**

**COUNTY COMMISSION OF MASON  
COUNTY, WEST VIRGINIA,**

**Defendant.**

**COMPLAINT**

Now comes the Plaintiff, for his Complaint and states as follows:

1. The Plaintiff, Curtis C. McConihay, is a resident of Mason County, West Virginia.
2. The Defendant, County Commission of Mason County, West Virginia, is a political subdivision of the State of West Virginia.
3. This court has jurisdiction as this action concerns a federal question pursuant to 29 U.S.C. § 201.

**COUNT ONE**

4. The Plaintiff, Curtis C. McConihay, has served as a Deputy Sheriff employed by the County Commission of Mason County, West Virginia.
5. On or about November 1, 2005, the Plaintiff, Curtis C. McConihay, was assigned the position of canine officer/canine handler and has continued in that capacity until the present date.
6. As part of his duties as a canine officer/canine handler, the Plaintiff was responsible for total care of a police dog which was owned by the County Commission of Mason County, West Virginia, including training, grooming, feeding, caring for and exercising the dog on a daily basis.
7. The Plaintiff, Curtis C. McConihay, spent at least one hour per day performing dog-related duties as required by his employment position with the Defendant.
8. The Plaintiff was paid an hourly wage for forty (40) hours per week as a Deputy

Sheriff for hours worked on the job. However, the Plaintiff was not paid any compensation for the extra duties incident to his assignment as canine officer from November 1, 2005 through December 1, 2006 and from December 1, 2006 has been paid an insufficient amount of compensation for said duties, said amount of compensation being both insufficient for the time Plaintiff has expended with the canine and in violation of applicable wage and hour law of the State of West Virginia.

9. The Plaintiff was and is entitled to payment of overtime compensation from November 1, 2005 through the present date pursuant to the Federal Labor Standards Act, 29 U.S.C. § 201 *et seq.* at the rate of one and one half (1 ½) times his regular rate of compensation.

10. Plaintiff is also entitled to reasonable attorney fees incurred in the prosecution of this action.

11. The Defendant is responsible for payment of these items to the Plaintiff under the Fair Labor Standards Act.

## **COUNT TWO**

The Plaintiff, Curtis C. McConihay, reasserts and realleges each and every allegation contained in Paragraph One (1) through Paragraph Eleven (11) hereof and incorporates the same herein by reference.

12. The aforementioned violations of said act were done willfully in violation of the Act and without good faith. Thus, the Plaintiff is entitled to an additional award of liquidated damages under the Fair Labor Standards Act.

13. The Defendant, County Commission of Mason County, West Virginia, willfully and knowingly violated the Fair Labor Standards Act and the State of West Virginia Wage Payment and Collection Act by not paying to the Plaintiff overtime incurred as a result of his time and duties spent in caring for the police dog.

14. In addition, the Plaintiff is entitled to attorney fees pursuant to W.Va. Code § 21-5c-8.

15. The Defendant is liable to the Plaintiff for the following:

(a) Compensatory damages for overtime compensation not paid to him as set forth herein;

(b) Reasonable attorney fees and costs;

(c) Liquidated damages pursuant to 29 U.S.C. § 260.

WHEREFORE, Plaintiff, Curtis C. McConihay, prays that he be awarded the compensatory and liquidated damages set forth herein, and prays further that he be awarded his attorney fees and costs as authorized by statute and whatever further, general relief the court deems appropriate.

A JURY TRIAL IS DEMANDED.

Respectfully submitted,

CURTIS C. MCCONIHAY,

By Counsel.

Prepared By:

s/Matthew L. Clark  
Matthew L. Clark (ID # 7144)  
Counsel for Plaintiff  
Kayser Layne & Clark, PLLC  
Post Office Box 210  
701 Viand Street  
Point Pleasant, WV 25550